

Source:  
University of Northern Iowa

## **Constitution Day Play: The Tinker Case Study**

This play could be used in the following way: You could do it as a readers theater, radio theater, or a regular play with the different scenes.

### **Characters: Modern Era**

Narrator(s)  
John Tinker  
Christopher Eckhart  
Mary Beth Tinker  
Mrs. Tinker  
Mr. Tinker  
Mr. Eckhart  
Principal

### **Characters: 18<sup>th</sup> c.**

George Washington  
A Federal Judge  
James Madison  
Roger Sherman  
George Mason  
William Samuel Johnson

Narrator: In 1965 John Tinker 15, Christopher Eckhardt 16, and Mary Beth Tinker 13 planned to wear black armbands to school in Des Moines to protest the Vietnam War. Their parents were wearing armbands in protest of the war, so the kids got the idea from their example.

The Principal became aware of the plan to wear armbands and adopted a policy on December 14, 1965 that said students would be asked to remove any armbands worn to school. If the students refused, they would be suspended.

**Scene:** (two students one boy and one girl walk into school wearing black armbands and are stopped by the principal

Principal: Don't come back unless you take off the armbands.

Narrator: On December 16<sup>th</sup>, Mary Beth and Chris wore the armbands to school and John planned to wear his the next day. The principal sent them home. They did not return to school until after the planned period for wearing the armbands had expired-New Year's Day.

**Scene:** Sitting at a table the two fathers of the teens are talking.

Father: This can't be right. We need to do something.

Narrator: A complaint was filed with the U.S. District Court by their fathers.

**Scene:** A judge behind his desk hits his gavel on the table...

District Court Judge: This district court rules in favor of the school. The school board had every right to bar protest armbands during school hours. It would disrupt the learning environment and might bring on violence.

Narrator: So is this the end of the case, is this the final word? Let's see what the Founding Fathers at the Constitutional convention would say about this.

**Scene:** Constitutional Convention,

George Washington: The clause we are debating is "cases arising under the laws passed by the legislature of the United States."

William Samuel Johnson (Conn.): Mr. Chairman, I would like to offer an amendment to have the clause read as follows "the jurisdiction of the Supreme Court shall extend to all cases arising under this Constitution and the laws passed by the legislature of the United States."

James Madison: Mr. Chairman, as this assembly knows I am the author of the clause we are discussing. I would like to comment on Mr. Johnson's amendment that changes my meaning. This resolution goes too far. I believe the court ought to be limited to cases of a judiciary nature. The right of interpreting the Constitution in cases not of this nature ought not be given to the judicial department."

Narrator: Mr. Madison lost his battle and his clause was changed to allow the Supreme Court to review legislation and to check it against the Constitution.

Getting back to the Tinker story what about the armband rule would warrant review by the Supreme Court? Nothing if it weren't for a few powerful antifederalist who insisted that a bill of rights be added to the Constitution.

**Scene:** Constitutional Convention

George Mason: Mr. Chairman

George Washington: The chair recognizes Mr. George Mason of Virginia

George Mason: As many at this assembly know I have a grave mistrust in people always doing the right thing this is why I wish this plan had been prefaced with a bill of rights and would second a motion if made for the purpose. It would give great quiet to the people; and with the aid of the states' different constitution a bill might be prepared in a few hours

Roger Sherman: Mr. Chairman

George Washington: The chair recognized Mr. Roger Sherman of Connecticut

Roger Sherman: The state constitutions with their bill of rights are not repealed by this Constitution; and being in force, are sufficient, The national government would not impinge on the rights of the people.

George Mason: (in rage) This Constitution was likely to produce a monarchy or a tyrannical aristocracy without a bill of rights, so no sir I will not sign it!

Narrator: So if a bill of rights was not added at the Constitutional Convention, what happened?

**Scene:** James Madison at a desk writing and talking

Madison: I really don't see the need for these extras to be added to the constitution but if it convinces the state to ratify this Constitution, then I shall introduce these 12 amendments into our new Congress as soon as it convenes.

Narrator: As soon as the new Congress met James Madison introduced 12 amendments to be added to the Constitution, which were modeled after Virginia's bill of rights which were written by George Mason. Only 10 of the amendments were ratified by the States and they are called the Bill of Rights.

Now that the Constitution has the Bill of Rights, which one can the Tinkers use to say that their rights were violated by the armband ruling.

**Scene:** fathers and children sitting around a table with copies of the Constitution.

Father: OK, kids lets not get discouraged by the lower district courts ruling, we still have the Supreme Court to appeal to. Let's look at the Constitution and see if we can find anywhere in here that your rights were violated when you were forced to not wear the armbands. Chris, go get your American Government book.

Mary Beth: Where do we look first, Dad?

Father: Look at the first 10 amendments, they are called the Bill of Rights, they were added as a protection of our rights.

John: Yeah, but Dad I was thinking that if most of the kids at the school and their parents don't want us to protest, can a few of us do it? We live in a democracy, right?

Father: Yeah, what's your point?

John: Well, if the majority of the people at the school don't want us to wear our armbands then shouldn't the majority rule?

Father: It is a paradox. The Bill of Rights has often limited the power of the majority. And just because the majority are against the armband ruling, it doesn't make it right. The Bill of Rights protects the voices of the minority so that they can be heard.

Mother: The purpose of the Bill of Rights is to remove certain rights from political controversy, to place them above and beyond the reach of majorities and officials and to establish them as fundamental constitutional principles.

Mary Beth: OK...but what right did the school violate when they made us take off our armbands?

Father: Well, let's look.

Everyone looked at the Constitution

John: I don't see anything that's says it is OK to protest.

Mother: Well, I see something.

Mary Beth: I agree with Chris, I don't see the word protest anywhere in the first 10 amendments.

Mother: Why did you wear your armbands?

John: Well, because we saw you guys wearing them and we also wanted to protest the Vietnam War.

Mary Beth: I see it as a quiet protest without saying anything.

Father: I see where your mother is going with this. The armbands were doing the talking for you, right?

John: Well, yeah I guess.

Mother: Now let's look at the bill of rights again and see if it protects free speech, even if it is the armband talking.

Mary Beth: Here it is Amendment #1 part of which says Congress shall make no law abridging the freedom of speech, which I assume means laws cannot be written to limit our free speech.

Father: I think you have found our key to the Supreme Court. We need to challenge them to review the armband rule from your school and get them to interpret this part of the Constitution. Hopefully they will see things our way.

Narrator: After an appeals court upheld the district court's ruling, the Supreme Court agreed during the following year to hear their case. In *Tinker v Des Moines Independent Community School District*, the Supreme Court ruled that wearing an armband is symbolic speech and as an expression of opinion is protected by the First Amendment.

**Scene:** Family gathered around reading the majority opinion.

Father: Here's what Justice Abe Fortas wrote in his majority opinion "Students in school as well as out of school are persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State."

John: What does that all mean, dad?

Father: Basically it states that students are citizens also and should be protected as citizens under the Constitution as well.

Mother: However the court did not prohibit schools from limiting students' rights to express themselves, but merely required them to provide a constitutionally valid reason for restricting students' speech.

Father: So what did you learn from all of this?

Mary Beth: I think that maybe our actions will encourage students to take a stand in their own lives to make the world a better place.

Mother: If we are to live in a democracy, where there is freedom, we need to constantly be alert to the protection of those freedoms.

John: I am thankful for the time and effort that the men of the Constitution took to guarantee my freedom over 150 years later.

Narrator: Yes, thank you Delegate Johnson for your foresight because if the clause was left the way it was as James Madison wrote it, the Tinkers would not have a stage to play out their complaint.

And thank you Delegate Mason, for voicing your concern that the people needed to have their rights protected.

Thank you Delegate Madison, for your compromise to assemble the amendments that would become The Bill of Right.

In a sense, what the men at the Constitution were attempting to do was what one railroad official was supposed to have proposed when he was told that the most dangerous car on the train was the last, simply leave off the last car. But there always has to be a last car, somebody has to be able to interpret the Constitution. If not, Congress and states would

be able to pass any laws they chose in defiance of the Constitution. The document and the rights it protects would then become meaningless.

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*So what does this all mean?*

It means that in order for you to keep your rights, you need to be aware of what rights you have, because if we forget and don't diligently work to protect our rights, we may lose them.